

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5693 OF 2004
(For condonation of delay)

ALONG WITH

CRIMINAL APPLICATION NO.567 OF 2005
(For leave to appeal)

The State of Maharashtra

Applicant

vs.

Sanjay Rajaram Yadav & ors.

Respondents

Ms.U.V.Kejriwal, Addl. Public Prosecutor for the State.

**CORAM : R. M. LODHA &
R. S. MOHITE,JJ.**

DATED : 3rd March 2005

P.C.

Heard.

2. In sessions case no.155/1999 the present respondents faced trial for the offences punishable under Sections 147, 148, 307 r/w 149, 324 r/w 149 and 323 r/w 149 IPC. The IInd Adhoc Additional Sessions Judge, Sangli, upon conclusion of trial, vide his judgment dated 29th March 2003 acquitted all the accused persons for the offences punishable under Sections 147, 148, 149 and 307 IPC. The accused no.4 was convicted for the offence punishable under section 324 IPC and asked to pay fine

of Rs.2,000/- and in default to suffer simple imprisonment for two months. The accused no.7 was convicted for the offence punishable under section 326 IPC and sentenced to suffer rigorous imprisonment for six months and pay fine of Rs.35,000/- and in default to suffer rigorous imprisonment for three months. Aggrieved by the judgment of acquittal the State has preferred criminal appeal on 26th September 2003. The appeal being barred by time, the application has been made for condonation of delay.

3. There is delay of 85 days. Pursuant to our order dated 2nd February 2005, an affidavit of Additional Public Prosecutor, Sangli has been filed on 15th February 2005. Even if we assume that delay is sufficiently explained, on perusal of the impugned judgment and the evidence referred to by the learned Additional Public Prosecutor, we are of the view that the judgment of acquittal does not call for interference and, therefore, leave does not deserve to be granted. The incident appears to have occurred during the cricket match. The decision of Umpire was objected to by the batting team. The supporters of both the teams rushed to the ground. One Pravin Vinayak Patil tried to interfere, but he was abused and beaten. According to the prosecution, the accused persons assaulted Shahaji (PW-3) and Chandrakant (PW-2). PW-2 and PW-3 sustained

injuries. In the light of the evidence led by the prosecution, the trial Judge found that the evidence of unlawful assembly and their common object was too vague and, thus, cannot be accepted. The trial Judge convicted the accused nos.4 and 7 for their individual acts.

4. The evidence that was read by the learned Additional Public Prosecutor does not show that accused nos. 1 to 9 formed an unlawful assembly or that their common object was to cause hurt to PW-2 and PW-3. As noticed above, during the cricket match the batting team objected to the decision of the Umpire and that resulted in the supporters of both the teams rushing to the ground. In that backdrop assault by accused nos. 4 and 7 took place. For their acts and commission, obviously the other accused persons who were not part of unlawful assembly could not be made liable much less vicariously.

5. The consideration of the evidence by the learned trial Judge does not appear to suffer from any illegality or perversity. The view of the learned trial Court is reasonably possible.

6. Accordingly, we are satisfied that no case for grant of leave is made out.

7. Both the applications are disposed of accordingly.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)